IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3821 OF 2005

Kalyan Dombivli Municipal Corporation. ...Petitioner.
Vs.
The Regional Provident Fund
Commissioner & Ors. ...Respondents.

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Mr. R. M. Agarwal with Mr. A. S. Rao for the Petitioner.
Mr. M. S. Karnik for Respondent Nos.1 and 2.
Mr. S. M. Oka for Respondent No. 5.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

July 21, 2005.

P.C.:

The Transport Undertaking of the Kalyan Dombivli Municipal Corporation is an establishment covered under the provisions of Section 1(3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, with effect from 23rd May 1999. The establishment has reported compliance with effect from July 2002. According to the Provident Fund Authorities, there was thus, a default on the part of the establishment in remitting Provident Fund dues for the period May 1999 to June 2002.

Proceedings under the Act were commenced on 16th September 2003 by the issuance of a notice to show cause and came to be concluded on 22nd April 2005 upon the passing of an order under Section 7A. The Provident Fund dues for the aforesaid period have been assessed at Rs.1,12,57,768/- and were communicated to the establishment by an order dated 2nd May 2005. Upon the failure of the establishment to remit the assessed dues within 15 days as directed, the Bank Accounts of the establishment maintained with the United Western Bank Ltd., Kalyan and ICICI Bank Ltd., Kalyan were proceeded against under Section 8F. The Bankers have forwarded an amount of Rs.75,25,513.43 and Rs.25,36,599.40 in view of the order under Section 8F. Out of the total assessed dues, an amount of Rs.1,00,62,112.83 has been recovered by the Department and a balance of Rs.11,95,655.17 is due and payable.

2. At the hearing of this petition, the action of the Department was sought to be impugned on the basis of the judgment of the Supreme Court in **District Exhibitors'**

Association v. Union of India, AIR 1991 SC 1381. After the petition was argued for sometime, Counsel appearing on behalf of the Petitioner has stated before the Court that the Petitioner is advised to file an appeal under the provisions of the Act before the Appellate Authority and prayed that this petition may be disposed of keeping open all the rights and contentions of the parties in the appeal. In the affidavit in reply filed by the First and Second Respondents, it has been stated that the employees of the establishment have not made any representation to the employer for waiver of their share contribution. In the circumstances, Counsel appearing on behalf of the Petitioner also prayed that liberty may be granted to submit a representation on that issue. It would be open to the Petitioner to submit a representation to the First and Second Respondents. The representation, if made, shall be considered in accordance with law.

3. This petition is accordingly disposed of on the request of Counsel appearing on behalf of the Petitioner, granting leave to the Petitioner to file an appeal under the provisions of the

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 before the Appellate Authority. Having regard to the fact that a substantial part of the assessed dues has already been recovered by the First and Second Respondents, we direct that the appeal shall be heard and disposed of without requiring the Petitioner to pay the balance of the assessed dues of Rs.11,95,655.17 in respect of the subject matter of the impugned demand. The appellate authority shall dispose of the appeal on merits, and the Respondents shall not raise the bar of limitation if an appeal is filed within a period of six weeks. The petition is accordingly disposed of.

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